

**(1) Monica Plummer (Administratrix of the estate
of the late Trevor John James)**

**(2) Monica Plummer (tutrix of the children of the said Trevor John
James)**

Appellant

v.

(1) Conway Bay Limited

(2) Sandy Bay Limited

Respondents

FROM

**THE COURT OF APPEAL OF
SAINT LUCIA**

JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL

Delivered the 14th January 2008

Present at the hearing:-

Lord Hope of Craighead
Lord Rodger of Earlsferry
Baroness Hale of Richmond
Lord Carswell
Lord Brown of Eaton-under-Heywood

[Delivered by Lord Hope of Craighead]

1. This is an appeal against a decision of the Court of Appeal of the Eastern Caribbean Supreme Court in Saint Lucia. The appellant, Monica Plummer, is the administratrix of the estate of the late Trevor John James, was living with him and is the mother of their two children. The respondents were the deceased's employers. On 19 October 1997 the deceased was killed by an explosion on a boat which was owned and operated by the respondents. At the time of his death he was working in

the course of his employment as a diving instructor. When the case came to trial before Shanks J the respondents admitted liability for the accident. The only issue was the assessment of damages. The case was unusual, because the deceased had had a previous relationship with another woman, Joan Mathurin, by whom he had also had two children. Both mothers had claims on behalf of the deceased's dependants under article 988 of the Civil Code and as administratrices of his estate under article 609.

2. On 8 July 2003, having heard and considered the evidence, the judge made awards in favour of each of the two claimants, to be held by each of them on behalf of their two children. He did so in a carefully reasoned judgment which shows that he did as much as he could on the available material to arrive at a fair assessment of what was due by way of damages. Joan Mathurin did not appeal against the award that was made in her case. Monica Plummer, on the other hand, did appeal against the judgment of the trial judge. She did so on two grounds only, which were set out in her notice of appeal. It is unnecessary to repeat them, except to say that one raised a short issue of fact and the other raised an equally short issue of law.

3. On 13 June 2005 the Court of Appeal dismissed the appeal for reasons that were set out in a brief judgment which was delivered at the end of the hearing. The judgment contained only four sentences. Those that deal with the merits of the appeal were as follows:

“There is no basis on which the judgment of the learned trial judge could properly be interfered with. The judge appreciated the evidence, and applied the law correctly to the facts as he found.”

4. The appellant's counsel, Mr Parry Husbands QC, then sought and obtained final leave to appeal to their Lordships' Board. He did so on various grounds, some of which had appeared in his skeleton argument to the Court of Appeal. But none of them addressed the grounds in the appellant's notice of appeal in that court, and none of them was referred to in the Court of Appeal's judgment. In support of the appeal to the Board Mr Husbands lodged three documents: a statement of facts and issues, a written case and a précis of his argument. None of these documents makes any reference to the grounds in the appellant's notice of appeal to the Court of Appeal. The written case contains two grounds of appeal which were not before that court. The other two documents do not, in any meaningful way, identify any grounds on which an appeal could be argued.

5. In their written case counsel for the respondents draw attention to the fact that none of the grounds of appeal set out in the appellant's notice of final appeal to their Lordships' Board fell for determination or were determined by the Court of Appeal. They submit that the appellant ought not to be allowed to raise new issues in an appeal to the Board, especially as no application for leave to do so had been made to their Lordships.

6. At the outset of the hearing before the Board Mr Husbands moved for an adjournment of the appeal and Mr Maragh for the respondents renewed his objection to the appellant's grounds of appeal. Having heard Mr Husbands in reply and considered the documents lodged by him in support of the appeal, their Lordships were unable to identify any grounds on which it would be proper for them to hear argument. They do not go so far as to say that it would never be open to an appellant to raise before the Board an argument that had not been raised before. But this case is at the opposite extreme. The only grounds of which anything approaching reasonable notice has been given are grounds which the Court of Appeal was not asked to consider at all and on which it has not expressed any opinion. Moreover, as the respondents' written case has shown, they are entirely without merit.

7. Their Lordships were of the opinion that no advantage was to be gained by allowing Mr Husband an adjournment in these circumstances. The fact that implementation of the judge's award has been delayed, and so much additional expense caused, by a worthless appeal is highly regrettable. But the consequences that must flow from this are plain and they are unavoidable. Their Lordships will humbly advise Her Majesty that the appeal should be dismissed with costs.